

# **SELECT BOARD COMMITTEE ON POLICING REFORMS**

## **Recommendation to the Select Board To Appoint A**

### **POLICE COMMISSIONERS ADVISORY COMMITTEE Preliminary**

The **Select Board Committee on Policing Reforms** recommends that the Select Board appoint a **Police Commissioners Advisory Committee** as a permanent standing Committee of the Select Board pursuant to the following Charge:

#### **CHARGE**

There is hereby established as a permanent standing committee of the Select Board a Police Commissioners Advisory Committee (hereinafter, the “Committee”) to (1) advise and assist the Select Board members in providing effective civilian oversight of the Brookline Police Department (hereinafter, “Police Department” or the “Department”) in their capacities as Police Commissioners under Massachusetts General Laws Chapter 41, §97 and Brookline Bylaws Section 3.1.2.A and to (2) serve as ombudspersons and public advocates on policing issues.

The purpose of the Committee shall be to assist the Select Board on an ongoing basis to improve policing services in Brookline and to foster a more inclusive, equitable, and effective Police Department and, in so doing, promote public trust and confidence in policing in Brookline. The Committee shall also function to support and encourage the Department and its officers and civilian employees in their provision of superior service to the community in alignment with the above purposes of the Committee.

The voting members of the Committee shall consist of five civilian residents of Brookline who collectively embody a breadth of lived and professional experience and expertise regarding policing and related issues, at least one a practicing lawyer. Voting members shall be appointed by the Select Board for staggered three-year terms. The Committee shall have a chair designated by the Select Board who is knowledgeable of public sector labor law, policing issues, and the due process protections of public employees.

The voting members must demonstrate an ability to make critical, independent, and fair judgments on the policies and practices of the Department. Voting members shall neither be a current employee of the Town nor an immediate family member of a current Department employee. To the extent practicable, membership shall have racial and economic diversity, including the perspectives of communities that have suffered from inequitable treatment by policing in America.

In addition to the voting members, there shall be five non-voting members. Four non-voting members shall be Town staff representing, respectively, the Office of Diversity, Inclusion, and Community Relations (hereinafter, the “Diversity Office”), the Human Resources Department, Town Counsel, and the Police Department. There shall also be a non-voting member designated by the Brookline Police Union (the “Police Union”). The Diversity Office shall coordinate Town staff in assisting the Committee.

A quorum of the Committee shall be three voting members, but the Committee may act only by a vote of a majority of the five voting members of the Committee.

As soon as possible, the Committee shall adopt a written code of behavior and ethics for its members, subject to the approval of the Select Board, addressing issues including conflicts of interest, gifts and favors, integrity and objectivity, self-examination and self-development, and transparency subject to confidentiality of information as required by law or otherwise appropriate.

To the extent practicable, the Committee shall meet at least monthly or more often as necessary to achieve its goals. A public comment period shall be on the agenda of every regular meeting.

The Committee's responsibilities shall include the following:

1. Working as appropriate with BPD's Accreditation Coordinator, to study BPD policies, practices, and procedures, including to scrutinize both personnel/diversity-related funding and policies (including promotions), as well as its Mission, Values, goals, and accomplishments including in the annual Financial Plan; to formulate and advocate for equitable and effective policing policies by the Select Board; to advise them on police-related warrant articles; and to be a forum for the public to offer suggestions and concerns about police matters.
2. A full review of the BPD Policies Manual, including consideration of an integration of the below changes into the Civilian Complaint process, followed by better and more explicitly inserting language updating the Mission, Values, and in many places explicitly adding some non-exclusive factors to help guide discretionary decisions, including by discouraging unconscious bias and encouraging a welcoming atmosphere for diverse cultures and underprivileged people.
3. To hold, at least once a year, a well-publicized public hearing to present, scrutinize, and analyze the Police Department's midyear and annual data regarding use of force, civilian complaints, traffic/pedestrian stops, policy changes, any pertinent survey data, and any other matters deemed material. The hearings shall be recorded, and a transcript shall be made that shall be posted to the Committee's webpage.
4. To make recommendations to the Select Board on matters related to upcoming collective bargaining with the Police Union that impact fair and equitable policing and accountability. The foregoing is not intended to give the Committee or its members any special status in collective bargaining negotiations.
5. To (a) prepare the periodic assessment of the functioning of the police complaint procedures as required by the Civilian Complaint Policy (including, as appropriate, the interaction between police complaint policies and other Town complaint policies) (b) prepare reports of the aforementioned public hearings and (c) make any appropriate recommendations to the Select Board based on both at a Select Board meeting following the completion of the assessment and report.
6. The Committee and/or a designated employee of the Diversity Office (the "Liaison") (hereinafter, "Committee" shall include, where appropriate, such Liaison) shall play an active and ongoing role in monitoring and providing input into civilian and other complaint cases, including, without limitation, the following responsibilities:

- i. Receive complaints directly from members of the public either via an email address monitored by the Liaison or in-person at the Diversity Office and promptly transmit them to the Police Department's Office of Professional Responsibility (hereinafter, the "OPR") and Select Board along with any observations or recommendations on issues including but not limited to the class designation(s) of the complaint in accordance with the complaint procedure.
- ii. The Liaison may (a) assist the complainant to the extent the latter permits throughout the life of the complaint, including from intake to any appeal; (b) attend the complainant's and all witness interviews, (c) be permitted to ask some follow up questions at them, (d) review all pertinent tapes or documentary evidence, and (e) discuss with OPR all factual and disposition opinions (including as to credibility), with the option of dissenting or adding other comments — all as stated in the soon-revised Civilian Complaint Policy.
- iii. Refer, as appropriate after consultation with the Human Resources Department, complaints to the Human Resources Department for review under the Town's Discrimination, Retaliation, and Harassment policy.<sup>1</sup>
- iv. Institute, maintain, and review systems for informing the public about methods for submitting complaints or commendations about police officers' actions.
- v. Institute and maintain a system to receive feedback from complainants or persons submitting commendations; analyze such feedback; and report findings to the Select Board when appropriate.
- vi. After the Police Chief's review and report, review the investigatory reports of the OPR on all complaints (civilian-initiated or otherwise) against police officers and any reports of the Liaison. The review shall include, but is not limited to, evaluations of the following items: the classification of the complaint, timeliness of the investigation, completeness of the investigation (including documentation of all relevant records), interviews of any witnesses, and weighing of evidence.
- vii. After such review, the Committee may (a) adopt the conclusions and findings of the report, (b) refer the report back to the OPR for further consideration of specific concerns; if the OPR disagrees with the cited concerns, the OPR and the Committee shall report their respective views to the Select Board, (c) in an allegation of serious misconduct (especially an allegation of a civil rights violation, corruption, excessive force, false arrest, or unlawful detention), the Committee should make a recommendation to the Select Board on whether the Select Board should retain an external investigator to supplement the OPR investigation; and/or (d) not adopt the report and report any and all of the respective views to the Select Board, including as to any possible appeal, as follows below:
- viii. In the case of a civilian complaint, the Liaison shall explain to the complainant the appeal process and assist in the submission of an appeal to the Select Board pursuant to the Civilian Complaint Policy provided the complainant desires to appeal; if the complainant declines to appeal, the Committee shall submit to the Select Board the Committee's reasons for not adopting the report and the OPR shall submit its report to the Select Board. After the Committee submits all reports to the Select Board pursuant to the foregoing, the Chair of the Select Board shall review them and consult with the Town Administrator on what actions, if any, the Select Board should consider pursuant to the Civilian Complaint Policy and present any options to the Select Board in executive session, if permitted by the Open Meeting Law.

---

<sup>1</sup> There is some ambiguity as to how different Town complaints processes interface with one another. The PCAC will need to work with Town staff to determine and codify the criteria and processes for appropriately directing complainants,

- ix. In an appropriate case as stipulated in the Complaints Policy, a member of the Committee may serve as a mediator for a complainant and the employee or officer who is the subject of the complaint.
  - x. In the absence of a designated Liaison from the Diversity Office to assist complainants, the Committee shall establish a procedure by which each complaint will be received and reviewed by a single Committee member, or by another alternative the Committee shall soon discuss and enact such a Human Resources employee, who shall assist the complainant and not be involved in any further action on that complaint other than reporting their findings to the full Committee.
8. The Committee shall work with the Police Department's Training officer to review and understand the Police Department's training programs and, if necessary, consult with outside experts, for the purpose of making recommendations to the Select Board to improve and make more effective the training of police officers.
  9. Members of the Committee, with the approval of the Select Board, may attend training sessions for police officers that are relevant to the Committee's work in order to better understand the training, provided that civilians are permitted to attend, and that, in the opinion of the Police Chief or the Department's Training officer, the presence of Committee members will not disrupt or detract from the nature or purpose of the training.
  10. The Committee shall conduct periodic confidential interviews and/or surveys of officers and civilian employees of the Police Department who volunteer to describe their experiences and offer suggestions for improving the Police Department. The Committee shall include in its reports to the Select Board any recommendations based on such research.
  11. The Committee shall annually review its work over the past year and report to the Select Board on such review, which report shall include any recommended changes, additions, or deletions to this Charge.

## EXPLANATION<sup>2</sup>

The Final Report of President Obama’s Task Force on 21st Century Policing notes that “Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community” (26). Under Massachusetts General Laws Chapter 41, §97, the Select Board is empowered to “make suitable regulations governing the police department and the officers thereof.”<sup>3</sup> Brookline General Bylaw Section 3.1.2.A has formalized the Select Board’s civilian oversight role by giving members the title “Police Commissioners.” In principle, Brookline has a very strong version of civilian oversight: five directly elected civilians in the Select Board have broad powers, including the final authority to hire, fire, promote, and suspend police personnel and implement police policies. In practice, however, the Select Board has seldom exercised the full range of its civilian oversight powers with myriad other responsibilities competing for its attention.

To strengthen the Select Board members in carrying out their responsibilities as Police Commissioners in providing effective civilian oversight over the Police Department, we recommend a standing committee of civilians tasked with providing ongoing monitoring and input into police policies, acting as liaison between the public and the police, and providing independent review of internal complaints investigations. This group would be called the Police Commissioners Advisory Committee (PCAC). The PCAC combines a reactive “review” model of civilian oversight (monitoring complaints of police misconduct) with a proactive “auditing” of police policies and procedures.

The current civilian complaints process engages with the Select Board in three ways. First, the Select Board is the body which hears and reviews *de novo* those complaints that civilians or officers appeal for further consideration once presented to them by the Town Administrator. Second, the Select Board with consultation of the Police Chief appoints two civilians to perform a biennial assessment of the complaints process. Third, the Select Board is tasked with ensuring the creation of a plan to educate the public about the civilian complaints process.

In each of these roles, the Select Board’s performance would be enhanced by the creation of the PCAC. The Select Board has not always heard appeals that were filed, as noted by the 2017 review of the complaints policy; the investigation of one complaint was appealed by both the civilian and the officer involved, but the Select Board did not schedule a hearing on either appeals. The biennial assessment of the complaints process has only happened twice since 2009.<sup>4</sup> The 2017 review was presented to the

---

<sup>2</sup> Some PCR members are inclined to propose this Committee to begin as soon as possible to begin implementing proposed reforms, especially to the Civilian Complaints Policy. At least one PCR member seeks to codify the PCAC as a brief By-Law after the Police Commissioner By-Law.

<sup>3</sup> There are two versions of the MA General Laws regarding the establishment of Police Departments (§97 and §97A). In 1921, Brookline adopted §97, which gives less authority to the police chief and more authority to the Select Board, and reads in part as follows: “In towns which accept this section ... there shall be a police department established under the direction of the Selectmen, who shall appoint a chief of police and such other police officers as they deem necessary, and fix their compensation ... and the Selectmen may remove such chief or other officers for cause ... The Selectmen may make suitable regulations governing the police department and the officers thereof...” See also *Chief of Police v. Westford*, 365 Mass. 526, 530-31 (1974) (“[T]he primary control of the police department is in the chief of police under §97A and in the Selectmen under §97. ... [T]he Legislature ... has given towns the alternatives of a ‘strong’ chief, a ‘weak’ chief, or no chief at all...”)

<sup>4</sup> The delay was explained as follows in the Select Board minutes for June 4, 2019: “Lt. Campbell responded that there were a number of circumstances causing the delay, former Chief O’Leary took a [medical] leave of absence; I was on leave of

Select Board on June 4, 2019 and accepted by the Select Board on October 15, 2019 but the recommendations to revise the Complaint Policy were never voted by the Select Board.<sup>5</sup> Regarding public education, it is not clear what actions the Select Board has taken to carry out public education on the complaints process, though the 2017 report mentions some ways to improve this process. The PCAC members could assist the busy Select Board in carrying out these responsibilities – as well as reviewing police practices more generally – in the same way that various other advisory boards assist and report to the Select Board (e.g. the Housing Advisory Board, Economic Development Advisory Board, and Building Commission). While the Select Board maintains formal policymaking authority, it tends to defer to its dedicated appointees.

Moreover, the PCAC would provide an additional layer of scrutiny to the internal investigations of complaints, providing a “check and balance” on the complaint process. The PCAC would be empowered to review all internal investigations *while they are live* (unlike some other communities, where civilian oversight boards only access the internal investigations after those investigations have been closed). If a majority of PCAC members find an investigation to be deficient, it can refer the complaint back to the IAO for further work; if that is insufficient, the PCAC can recommend that the Select Board take additional action to resolve the complaint, such as hiring an external investigator. The PCAC is also charged with referring suitable complaints to the Human Resources Department for investigation under its Harassment, Discrimination, and Retaliation complaint policy, though how these processes interface with one another is ambiguous and requires some sorting out by the PCAC and Departments.

This proposal does not, however, displace the investigation of police complaints from the Police Department by shifting investigations to an external agency. There are two immediate reasons for this. First, Town Counsel advised us that moving the investigation of complaints outside the Police Department would require collective bargaining with the Police Union – it would remove work from the bargaining unit and might constitute a substantial change in working conditions for police employees. As a result, such a change can only be implemented when the Police Union contract is renegotiated. Second, the relatively low volume of complaints (2 in 2020, 8 in 2019, 2 in 2018, and 2 in 2017) makes it difficult to justify the expense of hiring an external investigator, as civil rights attorney Howard Friedman told us. There are also some substantive reasons for keeping this function in the Police Department. Some scholars, such as Northeastern University Professor Jack McDevitt in his discussion with us, suggest that eliminating the adjudication of complaints from the Police Department hinders accountability by letting the Department off the hook for correcting misconduct. “Without responsibility to adjudicate wrongdoing and impose discipline, ... senior executives in the law enforcement agency cannot be held personally accountable for dealing with police misconduct...”<sup>6</sup>

---

absence and the difficulty in getting people to assist in the process, hopefully we will keep this on track.” The review period for both periodic assessments was extended to include all prior cases and years that had not yet been studied.

<sup>5</sup> The 2017 review was presented to the Select Board on June 4, 2019 by Bobbie Knable and Kelly Race. Objections to the scope of the review and its methodology were raised by a Select Board member. Because scope and methodology was defined by the terms of the periodic assessment required by the policy, the Chair of the Select Board suggested that they take further comments and revise the policy, including the section requiring a periodic assessment in order to better define the proper scope of the review. On October 15, 2019 the Select Board voted 4-1 to accept the Knable/Race review of the complaint process. The Complaint Policy was not voted. The Policing Reforms Committee’s Subcommittee on Accountability took up the review and revision of the Complaint Policy. Its recommendations will be part of the Committee’s recommendations to the Select Board.

<sup>6</sup> Bobb, Merrick. “Civilian oversight of the police in the United States.” St. Louis U. Pub. L. Rev. 22 (2003): 151.

Importantly, the PCAC's responsibilities are not limited to reactively monitoring complaints. The group would also, on an ongoing basis, review and audit the formal and informal police department policies and practices and recommend changes to those policies for the Select Board (as Police Commissioners) to implement; assist the Select Board in determining collective bargaining priorities with the Police Union (including, as desired, replacing the investigation of police complaints with an external investigator); hold regular public hearings to hear from the public about police issues and to present information about stops, arrests, complaints, and other data pertinent to the Police Department; study police training practices; and interview Police Department employees to hear about their concerns and suggestions for improvement. To effectively carry out these functions, the PCAC would be assisted by non-voting representatives from Town Counsel, the Office of Diversity, Human Resources Department, and the Police Department. There would also be a non-voting Police Union representative.

The PCAC attempts to achieve civilian oversight that is tailored to Brookline by leveraging its strong tradition of volunteerism to make its Town structure work effectively. The Select Board has ample legal authority to oversee the Police Department, but it lacks the skills, expertise, and dedication of volunteers that would give life to these powers.